

§ 11.35

§ 11.35 Service of complaint.

(a) A complaint may be served on a respondent in any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent, in which case the individual who gives the complaint to the respondent shall file an affidavit with the OED Director indicating the time and place the complaint was delivered to the respondent.

(2) By mailing a copy of the complaint by “Express Mail,” first-class mail, or any delivery service that provides ability to confirm delivery or attempted delivery to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11, or

(ii) A respondent who is not registered at the last address for the respondent known to the OED Director.

(3) By any method mutually agreeable to the OED Director and the respondent.

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides ability to confirm delivery or attempted delivery, to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11; or

(ii) A respondent who is not registered at the last address for the respondent known to the OED Director.

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case, the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph (d) of § 11.36, and the hearing officer may enter an initial decision on default.

(c) If the respondent is known to the OED Director to be represented by an attorney under § 11.40(a), a copy of the complaint shall be served on the attorney in lieu of service on the respondent

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in the manner provided for in paragraph (a) or (b) of this section.

[73 FR 47689, Aug. 14, 2008, as amended at 78 FR 20201, Apr. 3, 2013]

§ 11.36 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint but in no event shall that time be less than thirty days from the date the complaint is filed.

(b) *With whom filed.* The answer shall be filed in writing with the hearing officer at the address specified in the complaint. The hearing officer may extend the time for filing an answer once for a period of no more than thirty days upon a showing of good cause, provided a motion requesting an extension of time is filed within thirty days after the date the complaint is served on respondent. A copy of the answer, and any exhibits or attachments thereto, shall be served on the OED Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts that constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint that the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation, when in fact the respondent possesses that information. The respondent shall also state affirmatively in the answer special matters of defense and any intent to raise a disability as a mitigating factor. If respondent intends to raise a special matter of defense or disability, the answer shall specify the defense or disability, its nexus to the misconduct, and the reason it provides a defense or mitigation. A respondent who fails to do so cannot rely on a special matter of defense or disability. The hearing officer may, for good cause, allow the respondent to file the statement late, grant additional hearing preparation time, or make other appropriate orders.

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint that is not denied by a respondent in the answer shall be deemed to be

admitted and may be considered proven. The hearing officer at any hearing need receive no further evidence with respect to that allegation.

(e) *Default judgment.* Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.

§ 11.37 [Reserved]

§ 11.38 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the hearing officer.

§ 11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* A hearing officer, appointed by the USPTO Director under 5 U.S.C. 3105 or 35 U.S.C. 32, shall conduct disciplinary proceedings as provided by this Part.

(b) *Independence of the Hearing Officer.* (1) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to first level or second level supervision by either the USPTO Director or OED Director, or his or her designee.

(2) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to supervision of the person(s) investigating or prosecuting the case.

(3) A hearing officer appointed in accordance with paragraph (a) of this section shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the practitioner.

(4) A hearing officer appointed in accordance with paragraph (a) of this section shall be admitted to practice law and have suitable experience and training conducting hearings, reaching a determination, and rendering an initial decision in an equitable manner.

(c) *Responsibilities.* The hearing officer shall have authority, consistent with specific provisions of these regulations, to:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and other requests;

(3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(4) Authorize the taking of a deposition of a witness in lieu of personal appearance of the witness before the hearing officer;

(5) Determine the time and place of any hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts or law;

(8) Adopt procedures and modify procedures for the orderly disposition of proceedings;

(9) Make initial decisions under §§ 11.25 and 11.54; and

(10) Perform acts and take measures as necessary to promote the efficient, timely, and impartial conduct of any disciplinary proceeding.

(d) *Time for making initial decision.* The hearing officer shall set times and exercise control over a disciplinary proceeding such that an initial decision under § 11.54 is normally issued within nine months of the date a complaint is filed. The hearing officer may, however, issue an initial decision more than nine months after a complaint is filed if there exist circumstances, in his or her opinion, that preclude issuance of an initial decision within nine months of the filing of the complaint.

(e) *Review of interlocutory orders.* The USPTO Director will not review an interlocutory order of a hearing officer except:

(1) When the hearing officer shall be of the opinion:

(i) That the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion, and

(ii) That an immediate decision by the USPTO Director may materially